

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10045 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VIJAY TANKS AND VESSELS LTD.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners
MR PB MAJMUDAR for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 17/12/98

ORAL JUDGEMENT

1s. Rule. Mr. P.B. Majmudar, learned Central Government Standing Counsel, waives service on behalf of the respondents.

2. The present petition is filed against the order

of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), upholding the decision of the Commissioner (Appeals), denying the facility of MODVAT on the ground that the colour of the modvatable invoices was not in accordance with the notification issued by the Government.

3. Our attention is drawn to the fact that the Tribunal has mainly based its finding on the fact that no decision contrary to that relied upon by the Commissioner was shown to the Tribunal. The decision that is relied upon by the Commissioner is in the case of Somani Iron & Steel Ltd. v. Collector of Central Excise, Kanpur, 1998 (100) ELT 393 (Tribunal), wherein it was held that deviation in colour of the invoice cannot be condoned.

4. Today, learned advocate Mr. Dave has placed before us a decision of the Eastern Bench of the CEGAT in the case of Nezon Tubes Ltd. v. Commissioner of Central Excise, 1998 (104) ELT 559 (Tribunal), wherein an identical question is considered by the Tribunal and a contrary view is taken. The Tribunal observed that such a technical approach was not proper.

5. Under the circumstances, we deem it proper to set aside the impugned order and remand the matter to the Tribunal for deciding the question afresh. The Tribunal will decide the matter by 1st February, 1999.

6. It is also directed that, in the meantime, the respondent authorities will maintain status quo and will take no steps for any coercive recovery.

[C.K. THAKKAR, J.] [A.L. DAVE, J.]